

# **EXHIBIT 40**

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Chairman, Patrol Borough Brooklyn North Firearms Discharge Advisory Board

To: Chairman, Department Firearms Discharge Review Board

Subject: **FINDINGS AND RECOMMENDATIONS**

1. At 1906 hours, on November 12, 2007, Sergeant Carl Carrara Tax# 918826, Shield# 2037, Sergeant William Prokesch, Tax# 902228, Shield# 4366, Detective George Harvey, Tax# 906424, Shield# 7769, Police Officer Keith Livingston, Tax# 914846, Shield# 25650 and Police Officer Gregory Scalcione, Tax# 914950, Shield# 30506 discharged their firearms within the confines of the 79 Precinct.

2. On April 23, 2008, the Patrol Borough Brooklyn North Firearms Discharge Advisory Board met and reviewed the facts and circumstances in this case.

3. The following are the findings of this board:

- A. ☒ No Violations of Department Firearms Guidelines  
B. ☐ Violation of Department Guidelines  
C. ☐ Accidental of Discharge/Violation  
D. ☐ Accidental Discharge/No Violation

4. The board recommends the following:

- A. ☒ No corrective action to be taken  
B. ☐ Member concerned to review the law and instructions  
C. ☐ Member concerned to receive additional firearms instructions  
D. ☐ Re-training in tactics, re: \_\_\_\_\_  
E. ☐ Current assignment of member to be reviewed  
F. ☐ Other (Command Discipline, Charge and Specifications, etc), re \_\_\_\_\_

5. Board Members:

<u>RANK</u>	<u>NAME</u>	<u>ASSIGNMENT</u>	<u>CMD</u>
D.C.	Michael Marino	X.O., P.B.B.N.	P.B.B.N.
D.C.	Steven Silks	X.O. P.B.B.N.	P.B.B.N.
Insp.	Thomas Moran	Adjutant	P.B.B.N.
Insp.	John DeFranco	Special Projects	P.B.B.N.
Capt.	Anthony Tasso	X.O., 73 Pct.	73 Pct.
Sgt.	Marie Devino	Personnel	P.B.B.N.
Det.	Ramon Hubert	Comm. Affairs	P.B.B.N.
P.O.	Mark Ferranola	P.B.B.N.	P.B.B.N.

SIGNATURE

*[Handwritten signatures of board members]*

**POLICE DEPARTMENT  
CITY OF NEW YORK**

August 08, 2008

From: Chief of Department

To: Commanding Officer, Patrol Borough Brooklyn North

Subject: **FINDINGS OF DEPARTMENT FIREARMS DISCHARGE REVIEW BOARD**

1. At 1906 hrs, November 12, 2007, Sgt. William Prokesch, Tax # 902228, assigned to PSA #3, did have occasion to discharge a firearm within your command.
2. On August 6, 2008, the Department Firearms Discharge Review Board met and reviewed the facts and circumstances in this case. The Board concurs with your findings in this case.
3. The officer concerned shall be notified without delay. Verification of this notification shall be forwarded to the Board, indicating time and date the officer was notified and the name of the commanding officer who made the notification.
4. A copy of the Firearms Discharge Review Board's findings shall be placed in the member's command personnel folder.

  
**Joseph J. Esposito**  
CHIEF OF DEPARTMENT

**POLICE DEPARTMENT  
CITY OF NEW YORK**

August 08, 2008

From: Chief of Department

To: Commanding Officer, Patrol Borough Brooklyn North

Subject: **FINDINGS OF DEPARTMENT FIREARMS DISCHARGE REVIEW BOARD**

1. At 1906 hrs, November 12, 2007, Sgt. Carl Carrara, Tax # 918826, assigned to 079 Precinct, did have occasion to discharge a firearm within your command.
2. On August 6, 2008, the Department Firearms Discharge Review Board met and reviewed the facts and circumstances in this case. The Board concurs with your findings in this case.
3. The officer concerned shall be notified without delay. Verification of this notification shall be forwarded to the Board, indicating time and date the officer was notified and the name of the commanding officer who made the notification.
4. A copy of the Firearms Discharge Review Board's findings shall be placed in the member's command personnel folder.

**Joseph J. Esposito**  
CHIEF OF DEPARTMENT

**POLICE DEPARTMENT  
CITY OF NEW YORK**

August 08, 2008

From: Chief of Department

To: Commanding Officer, Patrol Borough Brooklyn North

Subject: **FINDINGS OF DEPARTMENT FIREARMS DISCHARGE REVIEW BOARD**

1. At 1906 hrs, November 12, 2007, P.O. Gregory Scalcione, Tax # 914950, assigned to PSA #3, did have occasion to discharge a firearm within your command.
2. On August 6, 2008, the Department Firearms Discharge Review Board met and reviewed the facts and circumstances in this case. The Board concurs with your findings in this case.
3. The officer concerned shall be notified without delay. Verification of this notification shall be forwarded to the Board, indicating time and date the officer was notified and the name of the commanding officer who made the notification.
4. A copy of the Firearms Discharge Review Board's findings shall be placed in the member's command personnel folder.

  
**Joseph J. Esposito**  
CHIEF OF DEPARTMENT

**POLICE DEPARTMENT  
CITY OF NEW YORK**

August 08, 2008

From: Chief of Department

To: Commanding Officer, Patrol Borough Brooklyn North

Subject: **FINDINGS OF DEPARTMENT FIREARMS DISCHARGE REVIEW BOARD**

1. At 1906 hrs, November 12, 2007, Det. George Harvey, Tax # 906424, assigned to 079 Precinct, did have occasion to discharge a firearm within your command.
2. On August 6, 2008, the Department Firearms Discharge Review Board met and reviewed the facts and circumstances in this case. The Board concurs with your findings in this case.
3. The officer concerned shall be notified without delay. Verification of this notification shall be forwarded to the Board, indicating time and date the officer was notified and the name of the commanding officer who made the notification.
4. A copy of the Firearms Discharge Review Board's findings shall be placed in the member's command personnel folder.

**Joseph J. Esposito**  
CHIEF OF DEPARTMENT

**POLICE DEPARTMENT  
CITY OF NEW YORK**

August 08, 2008

From: Chief of Department

To: Commanding Officer, Patrol Borough Brooklyn North

Subject: **FINDINGS OF DEPARTMENT FIREARMS DISCHARGE REVIEW BOARD**

1. At 1906 hrs, November 12, 2007, P.O. Keith Livingston, Tax # 914846, assigned to PSA #3, did have occasion to discharge a firearm within your command.
2. On August 6, 2008, the Department Firearms Discharge Review Board met and reviewed the facts and circumstances in this case. The Board concurs with your findings in this case.
3. The officer concerned shall be notified without delay. Verification of this notification shall be forwarded to the Board, indicating time and date the officer was notified and the name of the commanding officer who made the notification.
4. A copy of the Firearms Discharge Review Board's findings shall be placed in the member's command personnel folder.

**Joseph J. Esposito**  
CHIEF OF DEPARTMENT

**REPORT UNDER:**

C.D.F.D.R.B. # 104s07

B.N.F.D.R.B. # 16s07

**POLICE DEPARTMENT  
CITY OF NEW YORK**

April 13, 2008

From: Commanding Officer, Brooklyn North Investigations Unit

To: Chief of Department, Firearms Discharge Review Board

Subject: **FINAL REPORT - FIREARMS DISCHARGE BY FIVE (5) ON-DUTY MEMBERS OF THE SERVICE IN THE CONFINES OF THE 79 PRECINCT AT AN EMOTIONALLY DISTURBED PERSON SIMULATING A FIREARM. INTERNAL AFFAIRS LOG # 07-43709**

**FINAL**

1. On Monday, November 12, 2007 at approximately 1906 hours in front of 590 Gates Avenue in the confines of the 79 Precinct, Sergeant Carl Carrara, Tax# 918826, Shield# 2037 assigned to the 79 Precinct discharged his service weapon five (5) times, Sergeant William Prokesch, Tax# 902228, Shield# 4366 assigned to Patrol Service Area #3 discharged his service weapon four (4) times, Detective George Harvey, Tax# 906424, Shield# 7769 assigned to 79 Precinct Detective Unit, discharged his service weapon one (1) time, Police Officer Keith Livingston, Tax# 914846, Shield# 25650 assigned to Patrol Service Area #3 discharged his service weapon four (4) times and Police Officer Gregory Scalcione, Tax# 914950, Shield# 30506 assigned to Patrol Service Area #3 discharged his service weapon six (6) times at what they believed to be an armed emotionally disturbed person, causing his demise.

2. On Thursday, December 20, 2007, Sergeant Carl Carrara was interviewed under the provisions of Patrol Guide Procedure 206-13 at the Brooklyn North Investigations Unit. Sgt. Carrara was represented by Gustavo Vila, Attorney, Sergeant's Benevolent Association and by Sergeant Gerald Walsh, S.B.A., Brooklyn North Director. The Sergeant's statements were mechanically recorded and will be maintained at the Brooklyn North Investigations Unit. The Sergeant stated, in sum and substance, the following:

Sergeant Carrara stated that he was performing a 1450x2347 tour of duty assigned as the 79 Precinct Patrol Supervisor. P.O. Christopher Dede was assigned as the Sergeant's Operator. At approximately, 1900 hours a radio transmission for a 10-52 (Mother and Son) dispute with a firearm at 590 Gates Avenue was transmitted over Division Radio and assigned to P.O. Dudley and P.O. McCullough in Sector "D.E.F.". Sgt. Carrara instructed his driver to respond to that location, and upon arrival Sgt. Carrara entered the building and proceeded to the left down a hallway to



apartment "D". He was met by the assigned sector who informed him that he had a barricaded perpetrator inside the apartment who might be armed. Sgt. Carrara informed the Officers to take cover and use caution. Sgt Carrara was able to see a male inside the apartment peeking out from behind a closet door, but he was only able to see the male's face. Sgt. Carrara requested that the male come outside but he refused. Sgt. Carrara then located the perpetrators' mother and sister in a near by laundry room and asked them if they were okay to which they replied "Yes". The responding Officers informed the Sergeant that they had already requested E.S.U. Sgt. Carrara then raised Central to ascertain if she had an ETA for ESU's arrival. Captain McEvoy, 79 Precinct Executive Officer arrived on the scene and Sgt. Carrara proceeded to inform the Captain of the situation and the fact that the barricaded perpetrator might possibly be armed. As additional Units arrived to the scene Captain McEvoy deployed them to the front and the back of the building to secure the location. Once ESU arrived Sgt. Carrara exited the building, located ESU and informed them of the circumstances inside the apartment. As ESU and the Sergeant were speaking someone yelled out "...he's coming out the window". At that time Sgt. Carrara observed a male/black climbing out the window and squatting on the window sill with his right hand under his sweatshirt holding an object which the Sergeant perceived to be a gun. Sgt. Carrara immediately took cover behind the engine block of one of the RMP's while ordering the perpetrator to "show his hands and drop the weapon". The male ignored all commands that were issued to him as he leaped off the window sill and lunged towards the Officers while simultaneously removing the object he had secreted underneath his sweatshirt. Believing that he was about to be shot, Sgt Carrara discharged his service weapon five (5) times, two (2) hands supported with the use of sights at the male from a distance of approximately 6 feet.

3. On Thursday, December 20, 2007, Sergeant William Prokesch was interviewed under the provisions of Patrol Guide Procedure 206-13 at the Brooklyn North Investigations Unit. Sgt. Prokesch was represented by Andrew Quinn, Attorney, Sergeant's Benevolent Association and by Sergeant Gerald Walsh, S.B.A., Brooklyn North Director. The Sergeant's statements were mechanically recorded and will be maintained at the Brooklyn North Investigations Unit. The Sergeant stated, in sum and substance, the following:

Sergeant Prokesch stated he was performing a 1715x0212 tour of duty assigned to Patrol Service Area #3 with Police Officer Gregory Scalcione and Police Officer Keith Livingston. While on routine patrol in the confines of the 79 Precinct, Sgt. Prokesch heard a radio transmission of a "10-52" dispute with a firearm at 590 Gates Avenue. He instructed P.O. Livingston who was the Operator of their unmarked vehicle to respond to that location. While enroute, Sgt. Prokesch heard the 79 Precinct Patrol Supervisor request ESU, The Hostage Negotiating Team and the Duty Captain. As they approached the scene, Sgt. Prokesch instructed his driver to park the vehicle in a gas station on the corner of Throop Avenue and Gates Avenue. The Sergeant along with his two Officers immediately walked into the rear yard of the building in an effort to secure the parking lot. Unable to ascertain if the apartment in question had windows facing the rear of the building, Sgt. Prokesch decided he would walk into the building to find out if the apartment did in fact have windows facing out to the rear. As he was about to walk down to the apartment in question, he heard a 79 Unit requesting more Units to the front of the location. Sgt. Prokesch took a position on the west end of the courtyard at which time he observed a male black climbing out the window then leap down to the ground inside a gated area. The male then proceeded to stick his right hand underneath his sweatshirt and remove an object from his waistband and pull it up to his chest and push it out through his sweatshirt. Sgt. Prokesch ordered the male to drop the weapon and show his hands. The suspect ignored all orders that were given to him and he proceeded to point the object that was under his shirt at the Sergeant and the other Officers on the scene. The perpetrator then exited the gated area he was behind. He then looked both ways and charged towards Sgt. Prokesch. Sgt. Prokesch

attempted to retreat towards Throop Avenue and used a tree for cover. At the male continued to run towards him. When the perpetrator was approximately 8 feet from the Sergeant, he began to pull the object that was under his shirt out. Sgt. Prokesch, fearing that he was about to be shot, discharged his firearm, two (2) hands supported with the use of sights at the male.

4. On Thursday, December 20, 2007, Detective George Harvey was interviewed under the provisions of Patrol Guide Procedure 206-13 at the Brooklyn North Investigations Unit. Det. Harvey was represented by George Fahrbach, Brooklyn North Director, Detective Endowment Association and by Detective Christopher Hennigan, Delegate, Detective Endowment Association. The Detective's statements were mechanically recorded and will be maintained at the Brooklyn North Investigations Unit. The Detective stated, in sum and substance, the following:

Detective Harvey stated that he was performing a 1500x2300 tour of duty, assigned to the 79 Precinct Squad. At approximately 1900 hours, Det. Harvey and his partner Det. Michael Brady, a trained hostage negotiator were en-route to 590 Gates Avenue at the request of the 79 Precinct Patrol Supervisor. The Detectives were attired in civilian clothes with their shields displayed on their belt. When they arrived on the scene they observed that Patrol Members were already on the scene securing the front of the building, so they proceeded inside the location. Once inside the apartment building they were able to ascertain the condition from a Police Officer who was securing the apartment door. As Det. Harvey and his partner were standing in front of the apartment talking to the Officer they observed a male black inside the apartment opening and closing a back bedroom door. Within moments they heard a noise that sounded like either glass breaking or blinds coming down. The Officer that they were speaking with took a few steps into the apartment and alerted the other Officers that the subject was going out the bedroom window. Det. Harvey and Det. Brady left the apartment building and took a position in front of the apartment house. As they approached the front of the building they observed that the male was already out of the window inside the courtyard pacing back and forth in a rapid manner. The male had his right hand under his sweatshirt with something protruding outward. One of the Officers that was standing outside next to Det. Harvey informed him that while the perpetrator was barricaded inside the apartment he was armed with two knives. Det. Harvey and other Members of the Service repeatedly ordered the suspect to show his hands, to which the suspect refused to comply. After approximately two to three minutes of the perpetrators pacing in the courtyard he swung open the gate he was behind and charged at Det. Harvey and the other Officers that were positioned in front of the building. Det. Harvey took cover behind an RMP and unholstered his weapon, and it was at this time the suspect began to remove the object from underneath his shirt. Det. Harvey then discharged his off-duty weapon one (1) time, two (2) hands supported with the use of his sights from a distance of approximately 8 feet at the perpetrator. Once the perpetrator fell to the ground Det. Harvey ran to him to ensure that he was no longer a threat and to render aid.

5. On Thursday, January 17, 2008, Police Officer Gregory Scalcione was interviewed under the provisions of Patrol Guide Procedure 206-13 at the Brooklyn North Investigations Unit. P.O. Scalcione was represented by Steve Worth, Attorney, P.B.A. The Officer's statements were mechanically recorded and will be maintained at the Brooklyn North Investigations Unit. The Officer stated, in sum and substance, the following:

Police Officer Scalcione stated that he was working a 1730x0205 tour of duty, assigned to Conditions Auto/Gates Avenue Detail in the confines of the 79 Precinct with Sgt. Prokesch and P.O. Livingston in unmarked vehicle# 9621. At approximately, 1900 hours, a "10-52" with a firearm was transmitted over Department radio at 590 Gates Avenue. When P.O. Scalcione and his partners arrived on the scene they immediately went to the back of the building to secure the

location. They observed that Patrol Units were already present and positioned in front of the building. Officer Scalcione was positioned in the back of the building when he heard a 79 Precinct Officer requesting additional back up in the front of the building, P.O. Scalcione stated that from the excitement in the Officers voice he knew that something serious was going on. As he made his way to the front of the building he met up with Sgt. Prokesch who was already positioned near the court yard. Sgt. Prokesch pointed the perpetrator out to P.O. Scalcione. He was climbing out a bedroom window, holding onto the window sill with his left hand and holding an object under his sweat shirt with his right hand. The male continued to menace the Officers with this unknown object even after their repeated orders to "get on the ground and show his hands". The perpetrator never complied with any commands that were issued to him and eventually he jumped of the window sill ledge and landed in the courtyard below which was approximately 3 feet down. The perpetrator then exited the wrought iron gate, looked in both directions and proceeded to charge at the Officers. As he was running he removed the object from underneath his shirt and pointed it at the Officers. P.O. Scalcione, fearing that he was about to be shot, discharged his service weapon at the perpetrator two (2) hands supported with the use of sights from a distance of approximately 10 to 12 feet. After the discharge the male fell to the ground. Sgt. Prokesch approached the suspect and retrieved the object from the male's hand which turned out to be a hair brush.

6. On Thursday, January 17, 2008, Police Officer Keith Livingston was interviewed under the provisions of Patrol Guide Procedure 206-13 at the Brooklyn North Investigations Unit. P.O. Livingston was represented by Steve Worth, Attorney, P.B.A. The Officer's statements were mechanically recorded and will be maintained at the Brooklyn North Investigations Unit. The Officer stated, in sum and substance, the following:

Police Officer Livingston stated that he was working a 1730x0205 tour of duty, assigned to Conditions Auto/Gates Avenue Detail in the confines of the 79 Precinct with Sgt. Prokesch and P.O. Scalcione in unmarked vehicle# 9621. At approximately, 1900 hours, a "10-52" with a firearm was transmitted over Department radio at 590 Gates Avenue. When P.O. Livingston arrived to the scene he along with Sgt. Prokesch and P.O. Scalcione entered the building through the front door as P.O. Livingston looked to his left he observed Officers with their guns pointed inside an apartment yelling for the person inside to get down. P.O. Livingston and his partners proceeded to the rear of the building via a back door to cover the windows facing the rear yard. After approximately 3 to 5 minutes of being in the rear yard, P.O. Livingston heard someone yell into the radio, "Get more cops around the front" he immediately ran towards the front of building through the lobby at which time he observed Officers with their guns drawn yelling at someone to "show their hands" P.O. Livingston took cover behind an R.M.P. and observed the perpetrator on the window ledge with his right hand underneath his sweatshirt holding an object. P.O. Livingston perceived this object to be a weapon due to the fact of the shape that it had and actions that the perpetrator was taking. P.O. Livingston and the other Officers continued to yell commands for the perpetrator to "show his hands" with no response by male. After approximately one minute the perpetrator jumped from the ledge and walked out into the courtyard and positioned his right hand underneath his sweatshirt while his left hand was on top of his sweatshirt holding onto an object. The perpetrator used his two hands to direct the object towards the Officers. The perpetrator then looked to his right and then to his left and proceeded to run out the wrought iron gate towards P.O. Livingston and other Officers. Fearing for his safety and that of his fellow Officers he discharged his service weapon two hands supported with the use of sights from a distance of approximately 15 feet. P.O. Livingston reholstered his weapon after the male fell to the ground. Sgt. Prokesch, P.O. Scalcione and P.O. Livingston all approached the male. Sgt. Prokesch recovered the object from the male's sweatshirt, and it turned out to be a hairbrush. P.O. Livingston immediately requested an Ambulance for the male.

7.

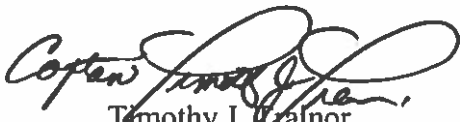
The following information is supplied as requested:

- A. A.D.A. Charles Guria gave permission to interview the involved members' officers on January 26, 2008
- B. The Sergeant's Benevolent Association and The Patrolman's Benevolent Association were present during the interviews
- C. Department Recognition and Disciplinary record (attached)
- D. UF49 signed by investigation ranking officer (attached)
- E. PD424-151, signed by MOS/Supervisor/ (original attached)
- F. C.P.I. background search (attached)
- G. M.O.S. attended the Tactics Review Section on: 11/30/07
- H. Sketch with positions and distances (attached)
- I. Diagram showing bullet wounds (attached)
- J. Full Medical Examiners Report (attached)
- K. Sprint Report (attached)

8. Based on a review of the statements of the subject and witness officers, physical and ballistics evidence it is the finding of this Investigator that the firearms' discharges of Sergeant Carl Carrara, Sergeant William Prokesch, Detective George Harvey, Police Officer Keith Livingston and Police Officer Gregory Scalcione are within the guidelines of the New York City Police Department and within the parameters of Article 35 of the New York State Penal Law for firearms' discharges. The perpetrator, later identified as Khiel Coppin had a mental history and was extremely disoriented and violent on the day of the incident. Mrs. Denise Owen, Khiel's mother called "911" to ask for assistance with her son because she could no longer handle him. While Mrs. Owen was on the phone with "911", Mr. Coppin could be heard yelling repeatedly in the background that he had a gun. When Central transmitted the job of a "10-52" (mother and son) to the responding units, she informed the responding officers that the male stated he had a gun. When responding officers arrived they encountered a male who was armed with knives barricaded inside a bedroom. The Officers immediately requested their supervisor and ESU. Mr. Coppin was very despondent and refused the Officers' repeated orders to drop the knives and come out of the apartment. When Sgt. Carrara, the Patrol Supervisor responded he surveyed the situation and requested an ETA for ESU and also the assistance of H.N.T. and T.A.R.U. Sgt. Carrara attempted to isolate and contain the male who he now surmised to be an armed Emotional Disturbed Person. Mr. Coppin escaped through a bedroom window into a courtyard in front of his building where he proceeded to menace numerous Members of the Service with an object concealed under his sweatshirt which they perceived to be a gun.

Their observations, coupled with the information they had received from Central led them to believe that Mr. Coppin was in fact armed with a firearm. While unable to keep Mr. Coppin contained, and who was acting in an erratic manner, the Officers repeatedly ordered Mr. Coppin to drop the weapon and show them his hands. However, Mr. Coppin refused and began to lunge at the Officers while simultaneously reaching under his shirt to remove what they believed to be a firearm. Fearing for their safety, the Officers discharged their weapons at Mr. Coppin in an effort to terminate the threat that they felt he presented to them. There was no violation as a result of this firearms discharge.

9. Submitted for your information.

  
Timothy J. Gralnor  
Captain